IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 6657 of 2007

1. Mrs.Manguben @ Mangalaben
Motibhai Patel and anr. ..Petitioners

vs.

1. Damjibhai Malshi Maheshwari
and another ...Respondents

Mr.Deepak J.Lulia for petitioners

Mr.V.S.Pandey i/b Mr.S.U.Pandey for respondents.

**CORAM: S.C.DHARMADHIKARI J.**
**19th NOVEMBER, 2007**

**P.C.**

1. Rule. Heard forthwith by consent.

2. The grievance of Mr.Lulia appearing for the petitioners is that the petitioners who have subsequently taken over the suit property as assignees of the original landlord/owner applied for amendment to the plaint to bring on record these developments and necessary and relevant documents. It is that amendment application which was pressed before the Court. The Court not only rejected that application but also proceeded to refuse interim injunction against defendant no.2 with regard to further alienation of the suit property.

3. Mr.Lulia states that his instructions are that the petitioners never pressed for any interim injunction. All that they wanted to do at this stage is to amend the plaint to bring on record the subsequent events. That amendment application was moved by Interlocutary Notice No.41 of 2006. Now, as and by way of abundant caution they have applied for amendment by way of Interlocutory Notice No.638 of 2007. The second interlocutory notice is pending whereas the first has been rejected by the impugned order which is composite in nature.

4. After having perused the proposed amendment and the order under challenge, I am of the view that the learned Judge committed an error apparent in going into the merits of the amendment and also refusing the interim injunction which was never prayed for. All that he was concerned was with the amendment. Whether the amendments are necessary to be incorporated or whether they will serve no purpose at all is the matter which concerns the merits of the case. In the peculiar facts of this case, when all that the plaintiffs wish is that certain developments

with regard to the suit property/premises be placed on record, then, I see no reason as to why the request in that behalf should have been rejected. It is not as if at the stage of amendment Merits are to be decided. It will always be open for the respondents to urge that no relief could be granted on the basis of the amended pleas.

5. In my view, order under challenge deserves to be interfered with as it is vitiated by error apparent and complete perversity. The learned Judge failed to apply his mind to the application for amendment in accordance with the settled principles and even proceeded to deny the amended relief at this stage itself. That was not permissible and is otherwise also improper. In such circumstances, the impugned order is quashed and set aside. The application for amendment made by the plaintiffs/present petitioners is allowed. The plaint shall be allowed to be amended in terms of schedule at pages 54 to 68 and 118 and 119 of the petition paper book. This amendment to be carried out within four weeks from today. Amedment plaint be served within a period of two weeks thereafter. Additional

written statement, if any, shall be filed within a period of four weeks from the date of receipt of amended plaint. The Trial Court to endeavour and dispose of the suit pending before it since 1994 expeditiously and preferably by the end of July, 2008.

6. Rule made absolute accordingly.

**(S.C.DHARMADHIKARI J.)**